

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

GAUGHAN GAMING - NATIVE)
LIGHTS, LLC, and)
GAUGHAN GAMING - TONKAWA,)
LLC,)

Plaintiffs,)

vs.)

THE TONKAWA TRIBE OF)
INDIANS OF OKLAHOMA and)
THE TONKAWA TRIBAL GAMING)
COMMISSION,)

Defendants.)

Case No.: CIV-11-330-HE

**PLAINTIFFS GAUGHAN GAMINGS' COMBINED RESPONSE TO TONKAWA
TRIBE'S AND TONKAWA TRIBAL GAMING COMMISSION'S
MOTIONS TO DISMISS AMENDED COMPLAINT**

COME NOW, Plaintiffs, Gaughan Gaming-Native Lights, LLC and Gaughan Gaming-Tonkawa, LLC (collectively "Gaughan"), to submit their combined response to Defendant Tonkawa Tribe of Oklahoma's ("Tribe") Motion to Dismiss Amended Complaint (Dkt. # 30) and the Tonkawa Tribal Gaming Commission's ("TGC") Motion to Dismiss Amended Complaint (Dkt. # 31). Because the motions raise arguments virtually identical to those raised in the Tribe's Motion to Dismiss (Dkt. # 17) and to conserve judicial resources, Gaughan simply adopts herein its Response to Tonkawa Tribe's Motion to Dismiss and Brief in Support (Dkt. # 33).

The Tribe replied (Dkt. 34) to Gaughan's Response to Motion to Dismiss (Dkt. # 33) with largely irrelevant or erroneous arguments and attachments. Gaughan sees no need to respond again to the Tribe beyond its first Response. Gaughan, however, provides a brief response to the TGC's Motion (Dkt. # 31).

Gaughan alleges that the TGC is acting in a conspiracy with the Tribe to circumvent the Management Agreements dispute resolution provisions by adjudicating the disputes with Gaughan within the TGC. The TGC claims erroneously that it is not bound by the Management Agreements. The Tribe, through the TGC, attempts to accomplish "an end run" around the arbitration by adjudicating much of the disputes under the guise of Gaughan's gaming license suspension and revocation. While the arbitrators exclusively will determine damages, the Tribe and the TGC seek to evade the Management Agreements' terms that permit Gaughan to seek declaratory and injunctive relief in a court of competent jurisdiction. This position conflicts with the express and clear language waiving their immunity and providing for specific relief within the Management Agreements. The Management Agreements clearly reference the TGC, waive immunity and provide for specific remedies. Gaughan's Amended Complaint properly appeals and seeks review of the TGC's final ruling upholding Gaughan's license suspension (Dkt. # 20, ¶¶ 49-51) in addition to restoring Gaughan to its management position. The Court should give effect to the plain terms of the Management Agreements and deny the motions to dismiss.

Respectfully submitted,

/s/ D. Michael McBride III

D. Michael McBride III, OBA # 15431

-Of the Firm-

CROWE & DUNLEVY
a Professional corporation
500 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103-3313
(918) 592-9800
(918) 592-9801 (Facsimile)

AND

Jimmy Goodman, OBA #3451
Regan Strickland Beatty, OBA #20349

-Of the Firm-

CROWE & DUNLEVY
A Professional Corporation
20 North Broadway
Suite 1800
Oklahoma City, OK 73102-8273
(405) 235-7700
(405) 239-6651 (Facsimile)

ATTORNEYS FOR PLAINTIFFS
GAUGHAN GAMING-NATIVE LIGHTS,
LLC AND GAUGHAN GAMING-
TONKAWA, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2011, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Gary S. Pitchlynn
O. Joseph Williams
Stephanie Moser Goins
Pitchlynn & Williams, PLLC
124 East Main Street
P.O. Box 427
Norman, Oklahoma 73070
Email: gspitchlynn@pitchlynnlaw.com
jwilliams@pitchlynnlaw.com
smgoins@pitchlynnlaw.com

Roger F. Wiley
Rosette & Associates PC
P.O. Box 1667
McAlester, Oklahoma 74502
Email: rwiley@rosettelaw.com

Ezekiel J. Fletcher
Rosette & Associates PC
124 W Allegan St
Suite 1400
Lansing, MI 49833
517-367-7040
Fax: 517-913-6443
Email: zfletcher@rosettelaw.com

/s/ D. Michael McBride III